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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 Case No. **2010-448**

12 In the Matter of the Accusation Against:

A C C U S A T I O N

13 MERRIDETH JO BERTSCHINGER, aka
14 MERRIDETH JO RANOW
1441 Loudon Lane
Imperial Beach, CA 91932

15
16 Registered Nurse License No. 575974

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
23 of Consumer Affairs.

24 2. On or about January 11, 2001, the Board of Registered Nursing issued Registered
25 Nurse License Number 575974 to Merrideth Jo Rannow, now known as Merrideth Jo
26 Bertschinger (Respondent). The Registered Nurse License was in full force and effect at all times
27 relevant to the charges brought herein and will expire on October 31, 2010, unless renewed.

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1 8. Section 2761 of the Code states:

2 The board may take disciplinary action against a certified or licensed nurse
3 or deny an application for a certificate or license for any of the following:

4 (a) Unprofessional conduct, which includes, but is not limited to, the
5 following:

6

7 (f) Conviction of a felony or of any offense substantially related to the
8 qualifications, functions, and duties of a registered nurse, in which event the record
9 of the conviction shall be conclusive evidence thereof.

10

11 9. Section 2762 of the Code states:

12 In addition to other acts constituting unprofessional conduct within the
13 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for
14 a person licensed under this chapter to do any of the following:

15 (a) Obtain or possess in violation of law, or prescribe, or except as directed
16 by a licensed physician and surgeon, dentist, or podiatrist administer to himself or
17 herself, or furnish or administer to another, any controlled substance as defined in
18 Division 10 (commencing with Section 11000) of the Health and Safety Code or
19 any dangerous drug or dangerous device as defined in Section 4022.

20 (b) Use any controlled substance as defined in Division 10 (commencing
21 with Section 11000) of the Health and Safety Code, or any dangerous drug or
22 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent
23 or in a manner dangerous or injurious to himself or herself, any other person, or
24 the public or to the extent that such use impairs his or her ability to conduct with
25 safety to the public the practice authorized by his or her license.

26 (c) Be convicted of a criminal offense involving the prescription,
27 consumption, or self-administration of any of the substances described in
28 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
record pertaining to, the substances described in subdivision (a) of this section, in
which event the record of the conviction is conclusive evidence thereof.

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30 (e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible
entries in any hospital, patient, or other record pertaining to the substances
described in subdivision (a) of this section."

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10. Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

11. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

12. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

1 Each board shall take into account all competent evidence of rehabilitation
2 furnished by the applicant or licensee.

3 REGULATORY PROVISIONS

4 13. California Code of Regulations, title 16, section 1444, states:

5 A conviction or act shall be considered to be substantially related to the
6 qualifications, functions or duties of a registered nurse if to a substantial degree it
7 evidences the present or potential unfitness of a registered nurse to practice in a
8 manner consistent with the public health, safety, or welfare. Such convictions or
9 acts shall include but not be limited to the following:

10 (a) Assaultive or abusive conduct including, but not limited to, those
11 violations listed in subdivision (d) of Penal Code Section 11160.

12 (b) Failure to comply with any mandatory reporting requirements.

13 (c) Theft, dishonesty, fraud, or deceit.

14 (d) Any conviction or act subject to an order of registration pursuant to
15 Section 290 of the Penal Code.

16 14. California Code of Regulations, title 16, section 1445 states:

17

18 (b) When considering the suspension or revocation of a license on the
19 grounds that a registered nurse has been convicted of a crime, the board, in
20 evaluating the rehabilitation of such person and his/her eligibility for a license will
21 consider the following criteria

22 (1) Nature and severity of the act(s) or offense(s).

23 (2) Total criminal record.

24 (3) The time that has elapsed since commission of the act(s) or offense(s).

25 (4) Whether the license has complied with any terms of parole, probation,
26 restitution or any other sanctions lawfully imposed against the licensee.

27 (5) If applicable, evidence of expungement proceedings pursuant to
28 Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUG

16. Norco, a brand name for hydrocodone with acetaminophen, is a dangerous drug pursuant to section 4022, and a Schedule III controlled substance as designated by Health and Safety Code section 11055(b)(1)(J).

FIRST CAUSE FOR DISCIPLINE

(June 30, 2009 Conviction for Burglary and Obtaining Prescription by Fraud or Deceit)

17. Respondent is subject to disciplinary action under section 490 and 2761(f) in that she was convicted of crimes which are substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

a. On or about June 30, 2009, in a criminal proceeding entitled *People of the State of California v. Merrideth Bertschinger*, in San Diego County Superior Court, case number CD220441, Respondent was convicted, based on her plea of guilty, to violation of Penal Code section 459, burglary, and Health and Safety Code section 11173(a), obtaining a prescription by fraud or deceit. As a result of the conviction, on or about September 8, 2009, Respondent was sentenced to three years summary probation, commitment to the custody of the sheriff for seven days, required to perform 80 hours of voluntary work at a nonprofit organization, and ordered to pay all fines and fees, among other terms. Both case number CD220441 and case number CD221452 (as set forth below in the Second Cause for Discipline,) were heard at the same time for purposes of plea and sentencing.

b. The facts that led to the conviction were that on or about March 15, 2009, Respondent picked up a prescription for Norco that she ordered in her son's name at a CVS

1 Pharmacy. Shortly thereafter, on or about March 19, 2009, Respondent telephoned CVS
2 Pharmacy, stated her name was "Krystal," and ordered a prescription for Norco using a doctor's
3 name and DEA registration number. Respondent ordered this prescription in her other son's
4 name.

5 c. On or about April 10, 2009, an agent from the Drug Enforcement Agency met
6 with Respondent. Respondent admitted to the agent that she began calling in prescriptions in
7 November 2008, using different names. Respondent admitted that she ordered the prescriptions
8 in various names, including the names of her sons, her husband, her brother and her brother-in-
9 law. Respondent admitted to changing the quantity of prescriptions in order to obtain more pills.
10 Respondent admitted altering a prescription for Percocet from 30 to 130 tablets. Respondent
11 admitted to filling prescriptions at other pharmacies, including Walgreens and Longs. She also
12 admitted to using names from various doctor's offices and using the names "Holly," "Emily,"
13 "Crystal," and "Angel." Finally, Respondent admitted that she took approximately 25-30 tablets
14 of Oxycodone daily.

15 SECOND CAUSE FOR DISCIPLINE

16 (June 30, 2009 Conviction for Burglary)

17 18. Respondent is subject to disciplinary action under section 490 and 2761(f) of the
18 Code in that she was convicted of a crime that is substantially related to the qualifications,
19 functions, and duties of a registered nurse. The circumstances are as follows:

20 a. On or about June 30, 2009, in a criminal proceeding entitled *People of the State*
21 *of California v. Merrideth Bertschinger*, in San Diego County Superior Court, case number
22 CD221452, Respondent was convicted, based on her plea of guilty, to violation of Penal Code
23 section 459, burglary. As a result of the conviction, Respondent was sentenced to custody for 180
24 days, with credit for time served, with further custody stayed pending successful completion of
25 probation. Among other terms, Respondent was also ordered to pay \$1,812 in fines and fees,
26 required to perform a public service program and complete 80 hours of volunteer work at a
27 nonprofit organization, and participate in substance abuse treatment. The imposition of the
28 sentence was suspended for three years and Respondent was granted probation.

b. The facts leading to the conviction were that on or about June 10, 2009, Respondent entered a Rite Aid Pharmacy, signed the electronic log and picked up a fraudulent prescription for Norco in the name of "J.T." Surveillance cameras recorded Respondent conducting this transaction.

c. Respondent was arrested on June 18, 2009 by task force agents and fraud investigators from the California Department of Justice, Bureau of Narcotic Enforcement, and Pharmaceutical Narcotic Enforcement Team. During a consensual search of Respondent's vehicle, agents located and seized a piece of paper with numerous pharmacy addresses and phone numbers in the San Diego area. Respondent admitted to the agents that she called in the fraudulent prescription on June 10, 2009 using the name "Amber." She also admitted to picking up the prescription on June 10, 2009, and acknowledged that she knew this activity was against the law. Respondent admitted to telephoning a fraudulent refill of the prescription for Norco on June 18, 2009. Finally, Respondent also admitted that she called in fraudulent prescriptions to various pharmacies using different names.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Fraudulently Prescribing and Obtaining a Controlled Substance)

19. Respondent is subject to disciplinary action under section 2762(a) of the Code for unprofessional conduct in that Respondent fraudulently prescribed herself and obtained Norco, a controlled substance, as set forth in paragraphs 17 and 18, above, which are incorporated here by this reference.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Use of Controlled Substance in a Dangerous Manner)

20. Respondent is subject to disciplinary action under section 2762(b) of the Code for unprofessional conduct in that Respondent used a controlled substance in a manner dangerous to herself and the public by using the drug without authorization by a physician, as set forth in paragraphs 17 and 18, above, which are incorporated here by this reference.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct – Conviction Involving Controlled Substances)

3 21. Respondent is subject to disciplinary action under section 2762(c) in that Respondent
4 was convicted of crimes involving the fraudulent prescription and falsification of records relating
5 to a controlled substance, as set forth in paragraphs 17 and 18, above, which are incorporated here
6 by this reference.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 (Unprofessional Conduct – Falsifying Records Pertaining to Controlled Substances)

9 22. Respondent is subject to disciplinary action under section 2762(e) in that Respondent
10 knowingly falsified prescriptions for controlled substances, as set forth in paragraphs 17 and 18,
11 above, which are incorporated here by this reference.

12 **PRAYER**

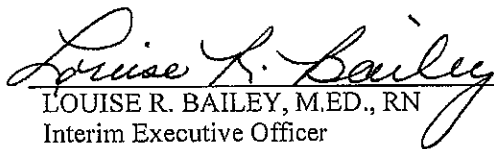
13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board of Registered Nursing issue a decision:

15 1. Revoking or suspending Registered Nurse License Number 575974, issued to
16 Merrideth Jo Rannow (currently in the name of Merrideth Jo Bertschinger).

17 2. Ordering Merrideth Jo Bertschinger (A.K.A. Merrideth Jo Rannow) to pay the Board
18 of Registered Nursing the reasonable costs of the investigation and enforcement of this case,
19 pursuant to Business and Professions Code section 125.3;

20 3. Taking such other and further action as deemed necessary and proper.

21
22 DATED: 3/18/10


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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